

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America
v.

ORDER OF DETENTION PENDING TRIAL

Cesar Arreola-Zambrano

Case Number: 18-9317MJ

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts are established: *(Check one or both, as applicable.)*

- ☐ by clear and convincing evidence the defendant is a danger to the community and require the detention of the defendant pending trial in this case.
- ☒ by a preponderance of the evidence the defendant is a flight risk and require the detention of the defendant pending trial in this case.

PART I -- FINDINGS OF FACT

- ☐ (1) There is probable cause to believe that the defendant has committed
 - ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. §§ 801 et seq., 951 et seq, or 46 U.S.C. App. § 1901 et seq.
 - ☐ an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332(b).
 - ☐ an offense listed in 18 U.S.C. § 2332b(g)(5)(B) (Federal crimes of terrorism) for which a maximum term of imprisonment of ten years or more is prescribed.
 - ☐ an offense involving a minor victim prescribed in ____.¹
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings

- ☒ (1) There is a serious risk that the defendant will flee; no condition or combination of conditions will reasonably assure the appearance of the defendant as required.
- ☐ (2) No condition or combination of conditions will reasonably assure the safety of others and the community.
- ☐ (3) There is a serious risk that the defendant will obstruct or attempt to obstruct justice; or threaten, injure, or intimidate a prospective witness or juror.

¹Insert as applicable: Title 18, § 1201 (kidnapping), § 1591 (sex trafficking), § 2241 (aggravated sexual abuse), § 2242 (sexual abuse), § 2244(a)(1) (abusive sexual contact), § 2245 (offenses resulting in death), § 2251 (sexual exploitation of children), § 2251A (selling or buying of children), § 2252 et seq. (certain activities relating to material involving sexual exploitation of minors), § 2252A et seq. (certain activities relating to material constituting or containing child pornography), § 2260 (production of sexually explicit depictions of minors for importation into the U.S.), § 2421 (transportation for prostitution or a criminal sexual activity offense), § 2422 (coercion or enticement for a criminal sexual activity), § 2423 (transportation of minors with intent to engage in criminal sexual activity), § 2425 (use of interstate facilities to transmit information about a minor).

PART II -- WRITTEN STATEMENT OF REASONS FOR DETENTION

(Check one or both, as applicable.)

- ☐ (1) I find that the credible testimony and information submitted at the hearing establishes by clear and convincing evidence as to danger that:
- ☒ (2) I find by a preponderance of the evidence as to risk of flight that:
- ☒ The defendant is not a citizen of the United States.
- ☒ The defendant, at the time of the charged offense, was in the United States illegally.
- ☐ The defendant has no significant contacts in the United States or in the District of Arizona.
- ☐ The defendant has no resources in the United States from which he/she might make a bond reasonably calculated to assure his/her future appearance.
- ☐ The defendant has a prior criminal history.
- ☐ The defendant lives and works in Mexico.
- ☐ The defendant is an amnesty applicant but has no substantial ties in Arizona or in the United States and has substantial family ties to Mexico.
- ☐ There is a record of prior failure to appear in court as ordered.
- ☐ The defendant attempted to evade law enforcement contact by fleeing from law enforcement.
- ☐ The defendant is facing a minimum mandatory of ____ incarceration and a maximum of ____.
- ☐ The defendant does not dispute the information contained in the Pretrial Services Report, except:
- ☒ In addition: The Court finds that Defendant is a voluntary flight risk. Defendant has a prior removal from the United States in 2009. A subsequent final order of removal was ordered on August 19, 2018. The probable cause statement from the Complaint reflects that Defendant was found to be illegally present in the United States after he was arrested and booked into the Maricopa County Jail on domestic assault-related charges. (The Court does not consider the circumstances of that arrest because no charges have been filed and the facts of that case have not been clearly established with this Court.) But the Court does consider that Defendant has been charged with an offense that alleges he violated the law by returning to this country without permission. The Court does not consider the Defendant's ICE detainer or the government's discretionary power of removal. *See United States v. Santos-Flores*, 794 F.3d 1088, 1091–92 (9th Cir. 2015). But the Court does consider whether Defendant is more likely to flee given the nature of his specific illegal presence in the United States. To suggest that a Court cannot consider a defendant's prior removals (whether it be one removal or ten removals) is contrary to the individualized nature of the Bail Reform Act. The Court

does not read *Santos-Flores* to say that the Court cannot consider the individual facts of a person's case, and status in the United States, before making a decision regarding detention. See *Santos-Flores*, 794 F.3d at 1092 (permitting review of defendant's "multiple unlawful entries into the United States"). Here, despite Petitioner's family ties to the community, the Court concludes Defendant is a flight risk based upon the Bail Reform factors. Defendant admitted returning to the United States shortly after his prior removal in 2009. (See 8/27/18 Pretrial Services Report Page 2.) Despite his lengthy continuing presence in the United States, he has demonstrated no effort to comply with the laws of the United States regarding his immigration status.

The Court incorporates by reference the findings in the Pretrial Services Report which were reviewed by the Court at the time of the hearing in this matter.

PART III -- DIRECTIONS REGARDING DETENTION

The defendant is committed to the custody of the Attorney General or his/her designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

PART IV -- APPEALS AND THIRD PARTY RELEASE

IT IS ORDERED that should an appeal of this detention order be filed with the District Court, it is counsel's responsibility to deliver a copy of the motion for review/reconsideration to Pretrial Services at least one day prior to the hearing set before the District Judge. Pursuant to Rule 59, FED.R.CRIM.P., Defendant shall have fourteen (14) days from the date of service of a copy of this order or after the oral order is stated on the record within which to file specific written objections with the District Court. Failure to timely file objections may waive the right to review. See Rule 59, FED.R.CRIM.P.

IT IS FURTHER ORDERED that if a release to a third party is to be considered, it is counsel's responsibility to notify Pretrial Services sufficiently in advance of the hearing before the District Judge to allow Pretrial Services an opportunity to interview and investigate the potential third party custodian.

Dated this 30th day of August, 2018.



Honorable John Z. Boyle
United States Magistrate Judge